



Docket 14809US02

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the Application of:

Reusche

Serial No.: 10/643,055

Filed: August 18, 2003

For: Water Agitation System for Water
Retention Structure

Art Unit: 3644

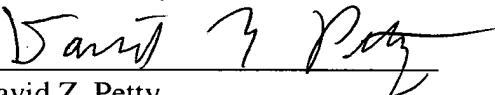
Examiner: Nguyen, Trinh T

Confirmation No. 3111

CERTIFICATE OF MAILING

I hereby certify that on the date indicated below this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Date: February 21, 2006



David Z. Petty

Reg. No. 52,119

PRE APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

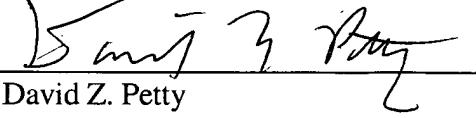
Dear Sir:

The Applicant requests review of the final rejection in the above-identified application.
No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reasons stated on the attached sheets

Respectfully submitted,

By: 
David Z. Petty
Reg. No. 52,119
Attorney for Applicants

McANDREWS, HELD & MALLOY, LTD.
500 West Madison Street, 34th Floor
Chicago, Illinois 60661
Telephone: (312) 775-8000
Facsimile: (312) 775 - 8100

REMARKS

The present application includes pending claims 1-57. Claims 13, 26, and 35-57 have been withdrawn. Claims 1-12, 14-25, and 27-34 have been rejected. Claims 1-5, 7, 8, 10, 12, 14-18, 20, 21, 23, 25, 27-30, and 33 remain rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,336,399 (“Kajisono”). Claims 6, 19, and 31 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Kajisono in view of Official Notice, or in the alternative, U.S. Pat. No. 5,465,279 (“Bengel”). Claims 9, 22, and 32 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Kajisono in view of U.S. Patent No. 4,166,086 (“Wright”). Claims 11, 24, and 34 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Kajisono in view of U.S. Patent No. 3,836,130 (“Earhart”).

I. Kajisono Does Not Teach, Nor Suggest, Agitation Members Or Blades Extending From Lateral Surfaces Of A Drive Shaft

The Applicant respectfully submits that Kajisono does not teach, nor suggest, an “agitator comprising at least one agitation member outwardly extending from a lateral surface of said distal end of said drive shaft” as recited in claim 1, “a blade assembly extending outwardly from said drive shaft” as recited in claim 14, or “an agitator having at least one blade outwardly extending from a lateral surface of said drive shaft” as recited in claim 27. *See* November 15, 2005 Response at pp. 3-5.

First, the “members” in Figure 7 of Kajisono indicated by the Examiner to be “impellers” **extend from a capsule** (which is separately connected to the drive shaft) **and not from the drive shaft itself**. *See id.* at pp. 4-5.

Second, even assuming the curved lines of Figure 7 of Kajisono are “impellers” as the Examiner indicates, they certainly do not “outwardly extend[] from a **lateral surface** of . . . **said drive shaft**,” as recited in claims 1 and 27 of the present application. *See id.* at 5.

Thus, at least for these reasons, the Examiner has not established a *prima facie* case of anticipation.

II. Kajisono Does Not Teach, Nor Suggest, Agitation Members Or Blades Stirring Water Within The Water Retention Structure

The Applicant respectfully submits that Kajisono does not teach, nor suggest, “said motor configured to rotate said agitator in order to stir water retained within the water

retention structure, wherein said at least one agitation member is operable to stir the water within the water retention structure” as recited in claim 1, “said motor operable to rotate said blade assembly in order to stir water retained within the water retention structure” as recited in claim 14, and “one blade . . . that is rotatably driven by said motor in order to stir water retained within the water retention structure” as recited in claim 27. *See id.* at pp. 5-7.

Kajisono discloses a capsule that operates to **create negative pressure** in the therein in order to draw fluid into the capsule so that bubbles are ejected from apertures within the capsule. Kajisono does not teach or suggest the limitation of impellers **stirring water within the water retention structure**, despite the Examiner’s efforts to read such a teaching into the text. *See id.* at pp. 5-6.

Thus, at least for these reasons, the Examiner has not established a *prima facie* case of anticipation.

III. Kajisono Does Not Teach, Nor Suggest, A “Base Removably Interconnected To A Cover”

The Applicant respectfully submits that Kajisono does not explicitly describe, or inherently disclose, “a base removably interconnected to a cover,” as recited in claim 1, “said cover being removably interconnected to said base” as recited in claim 14, or “a base removably secured to a cover” as recited in claim 27. *See id.* at pp. 7-8.

While Kajisono shows button-like protrusions extending upwardly from the lip of the cover in Fig. 1, there is absolutely nothing in Kajisono to indicate that these protrusions are fasteners and to assert otherwise is pure conjecture. *See id.* at 8. Furthermore, even if one were to assume that these protrusions are fasteners, there is absolutely nothing in Kajisono to lead one to believe that these are features that removably interconnect a base to a cover. *See id.*

Thus, at least for these reasons, the Examiner has not established a *prima facie* case of anticipation.

IV. Claims 6, 19, And 31 Are Not Obvious In View Of Official Notice

The Office Action asserts that it would have been obvious in view of Official Notice to one having ordinary skill in the art at the time of the invention was made to have modified Kajisono’s water agitation system so as to include a seal member interposed between the

cover and the base as recited in claims 6, 19, and 31 in order to prevent leakage and/or infiltration and thus provide a better seal therebetween. *See* January 31, 2006 Office Action, at p. 5. The Applicant respectfully submits that the subject matter of the assertion of Official Notice is not well-known in the art as evidenced by the searched and cited prior art and specifically challenges the Examiner's assertion of Official Notice. *See* November 15, 2005 Response at pp. 8-10.

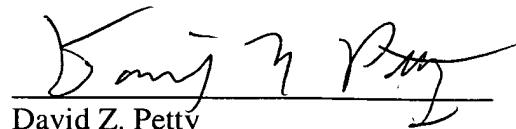
The Examiner also states that U.S. Pat. No. 5,465,279 to Bengel discloses a seal member interposed between two structural members and can be treated as having been substituted for the Official Notice taken. *See* January 31, 2006 Office Action, at p. 8. The Applicant respectfully submits that the Examiner has provided no motivation to combine Bengel with Kajisono to arrive at the invention of claims 6, 19, and 31, and that the Examiner's unsupported rejection based on Bengel is based merely on the Examiner's subjective belief and unknown authority.

Thus, at least for these reasons, the Examiner has not established a *prima facie* case of obviousness.

V. Conclusion

The Applicant respectfully submits that the pending claims of the present application should be in condition for allowance at least for the reasons discussed above and requests reconsideration of the claim rejections. The Commissioner is authorized to charge any necessary fees, including the \$500 fee for the Notice of Appeal, or credit any overpayment to the Deposit Account of McAndrews, Held & Malloy, Account No. 13-0017.

Respectfully submitted,



David Z. Petty
Registration No. 52,119
Attorney for Applicant

Date: February 21, 2006

MCANDREWS, HELD & MALLOY, LTD.
500 West Madison Street, 34th Floor
Chicago, Illinois 60661
Telephone: (312) 775-8000
Facsimile: (312)775-8100